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FILED  
DISTRICT COURT OF GUAM  
APR - 2 2007  
MARY L.M. MORAN  
CLERK OF COURT

10 Attorneys for Plaintiff United States of America

11  
12 UNITED STATES DISTRICT COURT

13  
14 TERRITORY OF GUAM

15 AMERICOPTERS, LLC., ) CIVIL NO. 03-00005  
16 )  
17 Plaintiff, )  
18 )  
19 vs. ) MOTION TO SUPPRESS  
20 ) DEPOSITION  
21 FEDERAL AVIATION ADMINISTRATION, )  
22 )  
23 Defendant. )  
24 )  
25 )  
26 )  
27 )  
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29 The United States hereby asks the Court to Suppress a Notice of Deposition filed by the  
30 Plaintiff (Exhibit A).

31 Plaintiff has requested a deposition prior to the hearing of a Motion filed by the United  
32 States. The Motion of the United States is to dismiss or for transfer to the Court of Claims, which  
33 would have exclusive jurisdiction over such a "Constitutional Takings" case.

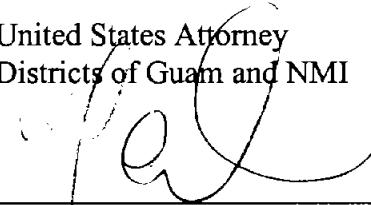
1        When a motion to transfer an action to the Court of Federal Claims is filed in a U.S.  
2        District Court, depositions and all such proceedings are stayed until after the U.S. District Court  
3        has ruled on the motion. 28 USC Sect. 1292 (d)(4)(B); See also, Lockheed Martin Corp. v.  
4        Defense Contract Audit Agency, 397 F. Supp. 2d 659 (D.Md., 2005); Mitchell v. U.S., 930 F.2d  
5        893 C.A.Fed (Va), 1991 ("Under 28 U.S.C. §1292(d)(4)(B), the district court shall suspend  
6        proceedings until this court's decision on the jurisdictional appeal."); Consolidated Edison Co.  
7        of New York v. U.S., 54 F.Supp. 2d 364 (S.D.N.Y., 1999)(Denying motion to lift 1292(d)(4)(B)  
8        stay to conduct discovery).  
9  
10  
11  
12        The transfer statute requires that the District Court consider the transfer rather than an  
13        outright dismissal. In spite of its opportunity to amend the Complaint, Plaintiff has failed to  
14        plead the elements of a taking. In the interest of judicial economy, the United States advocates  
15        dismissal of the Complaint. Plaintiff's attempt to use an employee deposition to cover the  
16        deficiency does nothing to reverse the failure to plead and it can not overcome the prohibition in  
17        Section 1292.  
18  
19  
20        Nothing in a deposition can lead to any evidence that would address the jurisdiction of the  
21        U.S. Court of Claims for takings cases. Secondarily, an outright dismissal would be most  
22        judicious.  
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25        Were the transfer not at issue, the United States would further request suppression based  
26        on the unavailability of the witness at the time demanded. Counsel would need to coordinate a  
27        time and place that can be accomplished by the witness, whose duty station is Hawaii.  
28

1 For all of the above reasons, the United States requests an Order Suppressing the Notice  
2 of Deposition.

3 Submitted this 2<sup>nd</sup> day of April, 2007.  
4

5 LEONARDO M. RAPADAS

6 United States Attorney  
7 Districts of Guam and NMI  
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9 BY:   
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11 MIKEL W. SCHWAB  
12 Assistant U.S. Attorney  
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CARLSMITH BALL LLP

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Hagåtña, Guam 96932-5027  
Tel No. 671.472.6813

Attorneys for Plaintiff  
Americopters, LLC

**FILED**  
DISTRICT COURT OF GUAM  
MAR 27 2007  
MARY L.M. MORAN  
CLERK OF COURT

IN THE DISTRICT COURT OF GUAM

AMERICOPTERS, LLC,

Plaintiff,

vs.

FEDERAL AVIATION ADMINISTRATION,

Defendant.

CIVIL CASE NO. CV03-00005

**NOTICE OF DEPOSITION;  
DECLARATION OF SERVICE**

TO: **Mr. DONALD HAMILTON**  
by and through  
**Mikel W. Schwab**  
Assistant U.S. Attorney  
**OFFICE OF THE UNITED STATES ATTORNEY**  
**DISTRICT OF GUAM AND CNMI**  
**108 Hernan Cortez Avenue**  
**Hagåtña, Guam USA 96910**  
Attorneys for Plaintiff United States of America

**US Attorney's Office  
Districts of Guam & NMI**

Time MAR 27 2007  
Receiving name Jobs II, 12  
Date keyed in Dbase  
Entered into Dbase by: f

PLEASE TAKE NOTICE that Plaintiff Americopters, LLC will take the deposition of **DONALD HAMILTON** at the law offices of Carlsmith Ball LLP, ASB Tower, 1001 Bishop Street, Suite 2200, Honolulu, Hawaii 96809-0656, on **Friday, April 6, 2007, at 10:00 a.m.** Mr. Hamilton is employed by the Federal Aviation Administration and has his office at the Flight



**COPY**

Standards District Office in Honolulu, Hawaii.

The deposition will be limited in scope. In particular, the subject matter of the questions confined to that information necessary for Americopters to oppose the FAA's recently filed Motion to Dismiss for lack of subject matter jurisdiction in the District Court for Guam.

The deposition will be conducted and recorded pursuant to the Federal Rules of Civil Procedure and the Local Rules for the United States District Court of Guam.

If said deposition is not completed on the date set out above, the taking of the deposition will be continued from day to day thereafter, except for Sundays and holidays, at the same place, until completed.

DATED: Hagåtña, Guam, March 27, 2007.

CARLSMITH BALL LLP



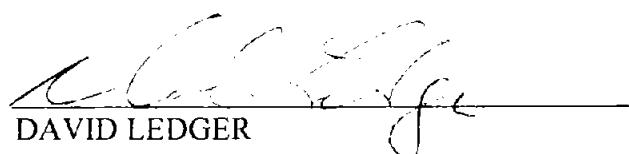
DAVID LEDGER  
ELYZE J. McDONALD  
Attorneys for Plaintiff  
Americopters, LLC

**DECLARATION OF SERVICE**

I, DAVID LEDGER, hereby declare under penalty of perjury of the laws of the United States, that on March 27, 2007, I will cause to be served, via hand delivery, a true and correct copy of the **NOTICE OF DEPOSITION; DECLARATION OF SERVICE** upon the following Counsel of record:

Mikel W. Schwab  
Assistant U.S. Attorney  
OFFICE OF THE UNITED STATES ATTORNEY  
DISTRICT OF GUAM AND CNMI  
108 Hernan Cortez Avenue  
Hagåtña, Guam USA 96910  
**Attorneys for Plaintiff United States of America**

Executed this 27th day of March 2007 at Hagåtña, Guam.



DAVID LEDGER

## CERTIFICATION

I, Marie Chenery, working in the United States Attorney's Office, hereby certify that I caused to be served via e-mail and facsimile a copy of the **Motion to Suppress Deposition, Waiver of a Hearing; Submission on Pleadings** and Defendant's *Ex Parte Application to Shorten Time* to:

Carlsmith Ball LLP  
Bank of Hawaii Bldg. Ste. 401  
134 W. Soledad Ave.  
Hagåtña, GU 96910

Dated: April 2, 2007

Marie Chenery  
Marie Chenery  
Paralegal  
U.S. Attorney's Office  
Districts of Guam and the NMI